

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

GEORGE CARY CLOUD,)	
)	
Plaintiff,)	
)	
v.)	Case NO.: 3:18-cv-562-ALB-WC
)	
DR. ELLIS, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff filed this *pro se* 42 U.S.C. § 1983 action on June 7, 2019, while incarcerated at the Russell County Jail in Phenix City, Alabama. On June 8, 2019, the court entered an order of procedure directing Defendants to file an answer and special report. Doc. 4. The order directed Plaintiff to “immediately inform the court and Defendants or Defendants’ counsel of record of any change in his address.” Doc. 4 at 3, ¶8. The order also advised Plaintiff that “[f]ailure to provide a correct address to this court within ten (10) days following any change of address will result in the dismissal of this action.” *Id.*

On June 18, 2019, the envelope containing Plaintiff’s copy of a notice issued by the court on May 14, 2019, was returned to the court marked as undeliverable because Plaintiff is no longer at the service address he provided to the court when he filed the complaint. Accordingly, the court entered an order June 19, 2019, requiring that by July 1, 2019, Plaintiff file with the court a current address and/or show cause why this case should not be dismissed for his failure to adequately prosecute this action. Doc. 17. The June 10 order specifically advised Plaintiff this case could not proceed if his whereabouts remained

unknown and cautioned him that his failure to comply with its directives would result in the dismissal of this case. Plaintiff's copy of the June 19, 2019, order was returned to the court June 28, 2019, marked as undeliverable.

The foregoing makes clear Plaintiff has failed to comply with the directives of the orders entered by this court and reflects a lack of interest in the continued prosecution of this case. This action cannot proceed properly in Plaintiff's absence. The court, therefore, concludes this case is due to be dismissed. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (As a general rule, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion.).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge this case be DISMISSED without prejudice for Plaintiff's failure to comply with the orders of this court and to prosecute this action.

It is further

ORDERED that **on or before July 17, 2019**, the parties may file an objection to the Recommendation. Any objection filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. This Recommendation is not a final order and, therefore, it is not appealable.

Failure to file a written objection to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal

conclusions” except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993)(“When the magistrate provides such notice and a party still fails to object to the findings of fact and those findings are adopted by the district court the party may not challenge them on appeal in the absence of plain error or manifest injustice.”); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE this the 3rd day of July, 2019.

/s/ Wallace Capel, Jr.

WALLACE CAPEL, JR.

CHIEF UNITED STATES MAGISTRATE JUDGE